THE HON'BLE SRI JUSTICE C.V.RAMULU

-

WRIT PETITION No.21076 of 1999

29th July 2005

Between:

B.Prasad …Petitioner

AND

The Labour Court-II, Hyderabad

& another …Respondents.

ORAL ORDER:

This writ petition is filed by the workman being aggrieved by the award passed by the Labour Court-II, Hyderabad in I.D.No.155 of 1996, dated 22-3-1999.

It is the case of the petitioner that he has joined the service of A.P. State Road Transport Corporation in the year 1988 as a Driver. His services were regularised in the said cadre with effect from 1-7-1989. While so, when he was driving the bus bearing No.AEZ 4198 on 28-5-1995 on the route Armoor to Degaon, it was involved in accident, and, as such, a charge sheet was issued framing the following charge.

"For having driven the vehicle No.AEZ 4198 at high speed on route Armoor-Degaon on 28-5-1995 which resulted in a fatal accident at Gandhi statue and another cyclist received severe injuries, damages to our vehicle and two cycles and the Government old building."

Having not satisfied with the explanation submitted by the petitioner, a detailed enquiry was ordered. The Enquiry Officer submitted a report holding the petitioner guilty of the charge. The disciplinary authority, on the basis of the report submitted by the Enquiry Officer, issued a show cause notice proposing to remove the

petitioner from the service. After receiving the explanation from the petitioner, final order of removal was passed on 28-8-1995. Aggrieved by the same, the petitioner filed appeal before the competent authority. However, the said appeal was dismissed on 8-9-1996. Having no other option, the petitioner filed claim petition under Section 2-A(2) of the Industrial Disputes Act before the Labour Court-II, Hyderabad and the same was taken on file as I.D.No.155 of 1996.

It is the contention of the learned counsel for the petitioner that the Labour Court without properly appreciating the facts and circumstances of the case upheld the findings of the disciplinary authority as confirmed by the appellate authority. Further, it did not consider as to the proportionality of the punishment. Therefore, the award passed by the Labour Court is arbitrary, illegal and liable to be set aside.

No counter affidavit is filed.

Learned counsel for the respondent-APSRTC strenuously contended that the petitioner was rash and negligent while driving the bus and, therefore, the bus met with an accident killing a cyclist. Further, his past service was also not clean and, therefore, the award passed by the Labour Court cannot be said to be either arbitrary or illegal and there are no warranting circumstances requiring this Court to interfere with the award, which is just and proper, under Article 226 of the Constitution of India.

I have given earnest consideration to the respective contentions made by the learned counsel on either side and perused the impugned order and other material available on record.

At the outset, I am of the opinion that the finding of the Labour Court that the petitioner was guilty of the charge as was found by the disciplinary authority as confirmed by the appellate authority cannot be said to be either illegal or arbitrary.

There is some evidence that the petitioner was negligent in driving the bus at the time of accident. It is the finding that the petitioner was rash and negligent and dashed against a person who was selling ice creams on a cycle at the first instance and later hit a cyclist boy aged about 11 years who died on the spot, and thereafter hit a government building. Further, the Traffic Inspector, who was examined during the course of enquiry, stated that the sketch prepared by him on his spot inspection would indicate that the accident occurred as a result of rash and negligent act of the

petitioner (Ex.M14). Thus, the plea of the petitioner that there was a failure of brakes and as such to avert a major accident, he swerved the bus to other side and in the process cyclist boy hit the bus and he was not negligent cannot be accepted. Under these circumstances, the finding of the Labour Court that the petitioner was responsible for the accident cannot be found fault with. Therefore, the only question that requires to be seen is whether the punishment imposed on the petitioner is proportionate to the misconduct alleged or not.

It is the contention of the petitioner that he had a fair and good track of service record and he was appointed in 1988 and till the accident in question he never involved in any accident case. However, the management asserted that the petitioner involved in other cases earlier and that he was awarded seven punishments, but no particulars and details were given. However, the Labour Court swayed away with the statement by the management that the petitioner had involved in seven cases earlier and refused to interfere with the punishment imposed on the petitioner. I am of the opinion that the Labour Court erred in not exercising the powers vested in it under Section 11-A of the Industrial Disputes Act. This being the first accident committed by the petitioner, and in a case of accident, it is difficult to see who was right and who was wrong, there was no necessity for the disciplinary authority to impose a punishment of removal from service though the disciplinary authority, on the basis of some evidence found the petitioner guilty of the charge. In a case of like this, some lesser punishment ought to have been imposed on the petitioner other than removal. The Labour Court erred in not exercising its powers under Section 11-A of the Industrial Disputes Act. Therefore, the writ petition is partly allowed and the award passed by the Labour Court is set aside.

In the result, the respondent management is directed to reinstate the petitioner with continuity of service, but without any back wages and without any attendant benefits. Further, the services of the petitioner from 28-8-1995 till the date of reinstatement shall be taken into consideration only for the purpose of retrial benefits and not for any other benefits like seniority, promotion etc.

29th July 2005. (C.V.RAMULU, J.)

ARS